

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:19CR48
(Judge Keeley)

GARRETT MICHAEL CARRIGAN,

Defendant.

ORDER ADOPTING, IN PART, AND HOLDING IN ABEYANCE, IN PART,
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
CONCERNING PLEA OF GUILTY IN FELONY CASE (DKT. NO. 33)

On September 3, 2019, the defendant, Garrett Michael Carrigan ("Carrigan"), appeared before United States Magistrate Judge Michael J. Aloï and moved for permission to enter a plea of GUILTY to Count One of the Information. After Carrigan stated that he understood that the magistrate judge is not a United States district judge, he consented to tendering his plea before the magistrate judge. Previously, this Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon Carrigan's statements during the plea hearing and the government's proffer establishing that an independent factual basis for the plea existed, the magistrate judge found that

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Carrigan was competent to enter a plea, that the plea was freely and voluntarily given, that he was aware of the nature of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. The magistrate judge entered a Report and Recommendation Concerning Plea of Guilty in Felony Case ("R&R") (dkt. no. 33) finding a factual basis for the plea and recommending that this Court accept Carrigan's plea of guilty to Count One of the Information.

The magistrate judge also directed the parties to file any written objections to the R&R within fourteen (14) days after service of the R&R. He further advised that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the R&R. The parties did not file any objections to the R&R.

The parties jointly moved by oral motion to dismiss the complaint in this case (Dkt. Nos. 1, 32) and the magistrate judge recommended that motion be granted (Dkt. No. 33). The Court **HOLDS** that recommendation **IN ABEYANCE** and will take up the motion at sentencing.

Carrigan then filed a motion for preparation of a modified presentence report and expedited sentencing hearing, which the

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Court granted on September 5, 2019 (Dkt. Nos. 34, 36). The modified presentence report was provided to the Court and the parties on September 13, 2019.

Accordingly, this Court **ADOPTS**, in part, the magistrate judge's R&R, **ACCEPTS** Carrigan's guilty plea, and **ADJUGES** him **GUILTY** of the crime charged in Count One of the Information.

Pursuant to Fed. R. Crim. P. 11(c)(3) and U.S.S.G. § 6B1.1(c), the Court **DEFERS** acceptance of the proposed plea agreement until it has received and reviewed the modified presentence report prepared in this matter.

Pursuant to U.S.S.G. § 6A1 et seq., the Court **ORDERS** as follows:

1. Counsel may file written objections to the modified presentence report on or before **October 2, 2019;**

5. The Office of Probation shall submit the modified presentence report with addendum to the Court on or before **October 9, 2019;** and

6. Counsel may file any written sentencing statements and motions for departure from the Sentencing Guidelines, including the

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factual basis from the statements or motions, on or before **October 9, 2019**.

The magistrate judge remanded Carrigan to the custody of the United States Marshal Service.

The Court will conduct the sentencing hearing for the defendant on **October 16, 2019** at **10:30 A.M.** at the **Clarksburg, West Virginia** point of holding court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and all appropriate agencies.

DATED: September 18, 2019

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE